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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,836	06/28/2001	Wendy Victoria Jane Young	CM1869M/VB	5673

27752 7590 03/05/2003

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EXAMINER

GOLLAMUDI, SHARMILA S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 03/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/744,836

Applicant(s)

YOUNG ET AL.

Examiner

Sharmila S. Gollamudi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Receipt of a Request for Extension of Time and Amendment B received on January 16, 2003 are acknowledged. Claims 1-15 are included in the prosecution of this application.

#### ***Claim Rejections - 35 USC § 102***

**Rejection of claims 1-4, 6-9, and 11-15 under 35 U.S.C. 102(b) as being anticipated by Hughes (5567428) is maintained.**

Hughes discloses a hair conditioner containing a non-volatile polysiloxane resin (col. 11 to col. 12), a dimethicone copolymer, and lipid material (cetyl alcohol) (Note example IX and X). Hughes discloses the substituent group is selected from aryl, arylalkyl, and alkaryl (col. 12, lines 24-40). The reference discloses a viscosity of 100 centistokes and the preference for MQ resins (col. 11, lines 4-15 and col. 11, lines 66). A hair conditioner and shampoo are taught in example IX and X.

#### ***Response to Arguments***

Applicant argues that while Hughes discloses a polysiloxane polymer, he does not disclose a polysiloxane resin wherein at least one substituent group of the resin possesses delocalized electrons. It is further argued that Hughes does not disclose that polysiloxane resins with delocalized electrons increase refractive index to increase hair shine. Lastly, it is argued that Hughes teaches a solvent and drying aid, which is not required by the present invention.

Applicant's arguments have been fully considered, but are not found to be persuasive. Firstly, the examiner points to column 12, lines 24-35 wherein Hughes discloses and exemplifies polysiloxane polymers with R groups selected from aryl,

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arylalkyl, and alkaryl groups. The examiner points out that these substituent groups inherently contain delocalized electrons. Although the reference does not explicitly disclose this property of the instant R groups, it is a property of these groups to arrange their electrons in a more stable arrangement. See Organic Chemistry by Francis Carey attached to the office action. Secondly, the examiner points out that instant claim language does not exclude the solvent and drying aid in the composition. Lastly, in regards to the teaching of the refractive index, the examiner points out that in composition claims the role of each component does not hold patentable weight. Further, it is pointed out that if the instant component is in the composition, it is capable of performing said function. In regards to the method claim of conditioning the hair, the examiner points to example XI wherein the composition is a hair conditioner containing the instant polysiloxane resin. Additionally, it is pointed out that the instant claims do not claim increasing refractive index.

***Claim Rejections - 35 USC § 103***

**Rejection of claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over Hughes (5567428) is maintained.**

Hughes discloses a hair conditioner containing a non-volatile polysiloxane resin (col. 11 to col. 12), a dimethicone copolymer, and lipid material (cetyl alcohol) (Note example IX and X). Hughes discloses the substituent group is selected from aryl, arylalkyl, and alkaryl (col. 12, lines 24-40). The reference discloses a viscosity of 100 centistokes and the preference for MQ resins (col. 11, lines 4-15 and col. 11, lines 66). A hair conditioner and shampoo are taught in example IX and X.

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Hughes does not exemplify where the polysiloxane is a 2-phenylpropyl polysiloxane resin. Although Hughes teaches all the substituent groups, he does not exemplify all the groups. Further, a packaged product is not taught.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to any one of the suggested substituent groups suggested by Hughes with the expectation of similar results since the reference teaches that they are all suitable. It is deemed obvious to one of ordinary skill in the art at the time the invention was made for one to place the composition in a packaged container in order to make it available to the consumer.

### ***Response to Arguments***

Applicant argues that there is no motivation to modify Hughes since Hughes does not teach a substituent group with delocalized electrons. Secondly it is argued that inventive composition does not contain a solvent and drying aid. Lastly, it is argued that Hughes does not suggest that the polysiloxane resins with delocalized electrons increase refractive index.

Applicant's arguments have been fully considered, but are not found to be persuasive. These arguments have been addressed above under the anticipation rejection. The motivation to modify Hughes is addressed in the last paragraph of the rejection.

**Rejection of claim 5 under 35 U.S.C. 103(a) as being unpatentable over Hughes (5567428) in view of GB 2297757 is maintained.**

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As set forth above, Hughes teaches topical personal care compositions containing polysiloxane resins.

Hughes does not teach the instant polysiloxane resin.

GB teaches a low viscosity organofunctionalised siloxysilicates. The low viscosity property allows for high loading of active ingredients without the deleterious effects such as difficulty in spraying, etc. (pg. 2). GB teaches the modified siloxysilicates possess high refractive indexes than other alkyl substituted siloxysilicates (pg. 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Hughes and GB since GB teaches the modifies resins have a high refractive indexes for shine.

### ***Response to Arguments***

Applicant argues that there is no motivation to combine Hughes and GB (Berthiaume) since Hughes does not teaches the instant polysiloxane resin for faster drying times and GB broadly teaches the use of MQ silicone resins in personal care product. It is argued that GB teaches phenylethyl substituted polysiloxane and not the instant 2-phenylpropyl substituted polysiloxane resin.

Applicant's arguments have been fully considered, but are not found to be persuasive. The arguments regarding Hughes have been addressed. Firstly, it is pointed out that both Hughes and GB teach hair compositions; thus the references are analogous art in the same field of endeavor of conditioning the hair. Secondly, as recognized by the applicant, GB teaches phenylethyl substituted groups, the examiner points out that this is an alkaryl group just as the instantly claimed 2-phenylpropyl. Also,

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the reference teaches that R1 or R2 may be a phenyl group and M1 or M2 may be a phenethyl or one to twenty-three carbon atom alkyl group. In the absence of showing the unexpectedness of 2-phenylpropyl versus phenethyl, it is deemed obvious since suggests and provides guidance for the instant substituent group. GB further teaches that modified siloxysilicates possess high refractive indexes than other alkyl substituted siloxysilicates and do not have deleterious effects, which provides the motivation to use an alkaryl group. Again, the examiner points out that it is the physical property of alkaryl groups to have delocalized electrons.

**Rejection of claims 1-15 under 35 U.S.C. 103(a) as being unpatentable over Pings (5482703) in view of GB 2297757 is maintained.**

Pings discloses a hair conditioning composition containing dimethicone copolyol (col. 3), nonvolatile polydimethylsiloxane, lipid material (col. 4, lines 60-65), and a cationic surfactant (col. 5) in instant amounts (Note claim 1 and examples).

Pings does not teach the instant polysiloxane resin.

GB teaches a low viscosity organofunctionalised siloxysilicates for hair care compositions. The low viscosity property allows for high loading of active ingredients without the deleterious effects such as difficulty in spraying, etc. (pg. 2). GB teaches the modified siloxysilicates possess high refractive indexes than other alkyl substituted siloxysilicates (pg. 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings since GB teaches the modified resins have a high refractive indexes for shine and soil resistance. It is deemed obvious to one

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of ordinary skill in the art at the time the invention was made for one to place the composition in a packaged container in order to make it available to the consumer.

### ***Response to Arguments***

Applicant argues that neither reference teaches delocalized electrons. It is argued that Ping requires the polysiloxane to be coupled with a dimethicone copolyol.

Applicant's arguments have been fully considered, but are not found to be persuasive. The examiner points to column 3, lines 5-19 wherein the polysiloxane resin is substituted with groups such as phenyl or alkyl groups. The examiner points out that these groups possess delocalized electron and is a physical property of them.

Secondly, the examiner points out that the instant claim language does not exclude dimethicone copolyol.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3014 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SSG

*SSG*  
February 27, 2003

*Michael G. Hartley*  
MICHAEL G. HARTLEY  
PRIMARY EXAMINER